

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JEAN EMMANUEL RODRIGUEZ,

Civil Action No. 18-11166

Plaintiff,

OPINION

v.

THE STATE OF NEW JERSEY, et
al.

Defendants.

APPEARANCES:

JEAN EMMANUEL RODRIGUEZ
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APT. F3
SOMERS POINT, NJ 08244

Plaintiff appearing pro se

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HILLMAN, District Judge

This matter comes before the Court on an Order to Show

Cause why the claims against Defendants New Jersey Transit Corporation and Richard Gray should not be dismissed for failure to serve the summons and complaint within the time set by Federal Rule of Civil Procedure 4. (ECF No. 41.) Plaintiff Jean Emmanuel Rodriguez ("Plaintiff") failed to respond to the Court's Order. For the reasons stated below, the Court will dismiss New Jersey Transit Corporation and Richard Gray for failure to serve. FED. R. CIV. P. 4(m).

BACKGROUND

The factual and procedural history of this matter is set forth in this Court's previous Opinion, Rodriguez v. N.J., No. 18-11166, 2021 WL 165106 (D.N.J. Jan. 19, 2021), and need not be fully repeated. Plaintiff filed suit against Defendants on June 26, 2018. (ECF No. 1.) Plaintiff also filed an application to proceed without prepayment of fees ("in forma pauperis" or "IFP" application) pursuant to 28 U.S.C. § 1915(a)(1). (Id.) On December 11, 2018, this Court screened Plaintiff's complaint, granted his IFP application, and ordered the Clerk to file the Complaint and mail to Plaintiff a transmittal letter explaining the procedure for completing the United States Marshals Service ("USMS") 285 Forms ("USMS 285 Form").

On December 12, 2018, the Clerk's Office sent a letter to the Plaintiff notifying him that he must complete and return to the USMS the USMS 285 Forms to allow him to serve his complaint

on Defendants through the USMS. (ECF No. 3.) The Clerk's Office explained that Plaintiff must complete and return the USMS 285 Forms to the USMS within thirty days and explicitly warned that "the USMS Will NOT serve the summons and complaint unless it receives a form for that defendant." (Id.) Moreover, the Clerk's Office placed Plaintiff on notice that he is required to serve his complaint on *each* Defendant within 90 days of the date the complaint was filed. The Clerk's Office further explained that if within 90 days of the filing of the complaint Plaintiff has not made service or requested an extension of time, then the "Court may dismiss this action for failure to prosecute under Rules 4(m) and 41(b) of the Federal Rules of Civil Procedure." (Id.)

It appears that Plaintiff never provided the USMS with the required completed USMS 285 Form for Defendant Richard Gray that would allow Plaintiff to serve his complaint on Defendant Gray despite being notified such form must be completed for each named defendant. (ECF No. 5.) It does not appear that Plaintiff has ever made any attempt at all to serve Defendant Richard Gray.

In addition, it appears that the USMS determined that the address provided for the New Jersey Transit Corporation did not exist when the Marshal attempted to complete service on February 6, 2019. (ECF No. 8.) On August 21, 2019, Plaintiff requested

that the summons be served to the New Jersey Transit Corporation pursuant to Federal Rule of Civil Procedure 4. (ECF No. 20.)

In this request, Plaintiff failed to provide the Court with a new address for the New Jersey Transit Corporation following the USMS's conclusion that the initial address provided did not exist. (Id.) Beyond this, the Court is unaware of any additional attempts by Plaintiff to successfully serve the New Jersey Transit Corporation.

The docket does not indicate any further communication regarding Defendant New Jersey Transit Corporation and Richard Gray until this Court issued its Order to Show Cause on January 19, 2021. In the Order to Show Cause, this Court required Plaintiff to show cause within 20 days as to why his claims against Defendants New Jersey Transit Corporation and Richard Gray should not be dismissed for lack of prosecution for his failure to effect service. (ECF No. 41.) Plaintiff has failed to file a response to this Court's Order to Show Cause.

DISCUSSION

Plaintiff's Complaint against Defendants Richard Gray and New Jersey Transit Corporation will be dismissed for Plaintiff's failure to comply with Federal Rule of Civil Procedure 4(m). Rule 4(m) provides, "[i]f a defendant is not served within 90 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action

without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” FED. R. CIV. P. 4(m).

Showing good cause “requires a demonstration of good faith on the part of the party seeking enlargement and some reasonable basis for noncompliance within the time specified by the rule.”

John Vorpahl v. The Kullman Law Firm, No. 17-1693, 2018 WL 813879, at *2 (D.N.J. Feb. 8, 2018) (quoting Veal v. United States, 84 F. App’x 253, 256 (3d Cir. 2004)).

Three factors are considered when determining whether good cause exists: “(1) reasonableness of plaintiff’s efforts to serve, (2) prejudice to the defendant by lack of timely service, and (3) whether plaintiff moved for an enlargement of time to serve.” Id. (quoting MCI Telecommunications Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1097 (3d Cir. 1995)). Even if a plaintiff fails to show good cause, however, the district court must still consider whether any additional factors warrant a discretionary extension of time. Petrucelli v. Bohringer & Ratzinger, 46 F.3d 1298, 1307 (3d Cir. 1995). Although courts must liberally construe submissions by pro se parties, Plaintiff’s pro se status does not exempt him from compliance with this Court’s applicable rules. See Jones v. Sec’y Pennsylvania Dep’t of Corr., 589 F. App’x 591, 593 (3d Cir.

2014) ("Although we liberally construe pro se filings, [plaintiff] is not exempt from procedural rules or the consequences of failing to comply with them.").

The Court finds that Plaintiff has not shown good cause for failing to serve Defendants New Jersey Transit Corporation and Richard Gray. "In considering 'good cause,' 'the primary focus is on the plaintiff's reasons for not complying with the time limit in the first place.'" Ashley v. Metelow, No. 15-3153, 2019 WL 6130749, at *2 (D.N.J. Nov. 19, 2019) (quoting MCI Telecomms. Corp., 71 F.3d at 1097). Plaintiff has not provided the Court with any information as to why he has not served Defendants New Jersey Transit Corporation and Richard Gray over two years since the Complaint was filed, which is well past the Federal Rule of Civil Procedure's 90-day requirement.

Even if Plaintiff was reasonably diligent in his initial service efforts to serve Defendant New Jersey Transit Corporation, he was not diligent after his first failed attempt to serve Defendant New Jersey Transit Corporation. The USMS returned Defendant New Jersey Transit Corporation's summons unexecuted on February 7, 2019. In the "Remarks" section, the Marshals wrote: "Address doesn't exist." (ECF No. 8.) Plaintiff waited until August 21, 2019 to write the Court to request that the summons be served to the New Jersey Transit Corporation pursuant to Federal Rule of Civil Procedure 4. In

this request, Plaintiff failed to provide the Court with a new address for the New Jersey Transit Corporation following the USMS's conclusion that the initial address provided did not exist.

Plaintiff also failed to provide any reasoning for failing to address serving Defendant New Jersey Transit Corporation until 6 months after the summons was returned unexecuted. Plaintiff has failed to make any additional attempt to properly serve New Jersey Transit Corporation or any attempt at all to serve Defendant Richard Gray. "Even allowing for Plaintiff's pro se status, given the time he has had to address the problem it cannot be reasonably concluded that he has been diligent or made a good faith effort to do so." Ashley, 2019 WL 6130749, at *2 (quoting Landy v. Irizarry, 884 F. Supp. 788, 793 (S.D.N.Y. 1994)).

While Defendants Richard Gray and New Jersey Transit Corporation may not be prejudiced by the lack of timely service, Plaintiff has not provided a response to this Court's Order to Show Cause or sought an extension of time to serve Defendants Richard Gray and New Jersey Transit Corporation. Moreover, while the Court recognizes its power to do so, after an examination of the record as a whole, there are no apparent additional factors that would warrant a discretionary extension of time by the Court sua sponte. On balance, the proper remedy

here is dismissal without prejudice. Thus, Plaintiff's lack of compliance with Rule 4(m) warrants the dismissal of his claims against Defendants Richard Gray and New Jersey Transit Corporation without prejudice.

CONCLUSION

For the above reasons, the claims against Defendants Richard Gray and New Jersey Transit Corporation will be dismissed.

An appropriate Order will be entered.

Date: February 12, 2021
At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.